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# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Bedeau  
**Respondent:** Mr S Murrells  
**Heard at:** East London Hearing Centre  
**On:** 15 February 2022  
**Before:** Employment Judge Russell  
**Representation:**  
**For the Claimant:** In person  
**For the Respondent:** Ms K Anderson (Counsel)

## JUDGMENT

- 1. The claim of unfair dismissal, unauthorised deduction from wages and holiday pay is struck out. The Tribunal does not have jurisdiction to hear those claims against this Respondent.**
- 2. The claim of race discrimination against this Respondent is struck out as having no reasonable prospects of success.**

## REASONS

1 This is the sixth claim presented by the Claimant arising from the same set of facts as have given rise to multiple complaints and allegations against his former employer, The Co operative Group Limited (“Co-Op”). This sixth claim was brought solely against Mr Murrells, the CEO of Co-Op. It was presented to the Employment Tribunal on 28 August 2021 following ACAS Early Conciliation between 7 June 2021 and 29 July 2021. The Respondent applies to strike out in its entirety this sixth claim as having no reasonable prospects of success.

2 The Claimant’s complaints against Co-Op in the first five claims were set out a list of issues agreed by Employment Judge Burgher at a Preliminary Hearing on 5 October 2021. The Claimant is relying upon 55 acts as constituting conduct which cumulatively amounted to a breach of the implied term of trust and confidence entitling him to resign

and treat himself as dismissed. The same 55 detriments are relied upon as acts of direct race discrimination or in the alternative, harassment relating to race. The final 22 detriments are also relied upon as victimisation. As Judge Burgher recorded in his Summary, this sixth claim had been presented but not yet responded to and so he directed that it be discussed at the resumed Preliminary Hearing listed for 18 November 2021. As recorded by Judge Burgher, the Claimant was visibly upset when asked for details of his claims and it was difficult to identify specific detriments from the very lengthy narrative provided by the Claimant. Given the time and care dedicated to identifying the complaints at the hearing, I consider it significant that there is no reference to any complaint specifically against Mr Murrells.

3 At the resumed Preliminary Hearing on 18 November 2021, Judge Burgher granted an extension of time for presentation of a Response by Mr Murrells to this sixth claim and case management orders were made. Judge Burgher recorded that the list of issues agreed at the October hearing may need to be updated to reflect the claim against Mr Murrells. No further attempts to identify the issues in the sixth claim were made until the Claimant sent an email to the Tribunal at 9.43am on 14 February 2022. This was the first day of the 12-day final hearing which was not able to proceed for other reasons.

4 In his email, the Claimant identified in 8 bullet points the further issues which he wished to put before the Tribunal. These were as follows:

- (1) Between 20 September 2020 and 27 April 2021, a Mr Andy Mills-White failed to follow appropriate company policies and instead co-ordinated conduct against the Claimant in response to the claims proceeding in the Tribunal.
- (2) Between 20 September and 27 April 2021, Mr Mills-White intentionally and deliberately misled the Claimant in order to support efforts to have him unfairly dismissed.
- (3) On 27 April 2021, Mr Andy Mills-White engaged in harassment of the Claimant with the express intention of upsetting him, contributing the unfair constructive dismissal.
- (4) Between August 2019 and 28 April 2021, HR/ Eleanor Ryan and Lala Chek coordinated discriminatory conduct and victimisation of the Claimant, this included misinformation to the Claimant's managers and actioning the suspension of the Claimant.
- (5) In March 2021, Eleanor Ryan presented her own notes as statements in order to build inaccurate, misleading, and detrimental evidence against the Claimant and so contributed to his constructive dismissal and victimised him.
- (6) On or before 20 September 2020, Steven Murrells authorised Andy Mills-White to coordinate the activities above which were discriminatory in nature after having been made aware of the issues he was facing at work and which contributed to the Claimant's unfair constructive dismissal.
- (7) On or before 20 September 2020, Steven Murrells authorised Andy Mills-White to coordinate the actions above as acts of victimisation, with knowledge of the Claimant's Tribunal claims.

- (8) In breach of section 172 of the Companies Act, and in his capacity as a director, Steven Murrells deliberately and recklessly carried out and authorised activities contrary to the Employment Rights Act 1996, the Equality Act 2010 whilst at the same time promoting the anti-racist zero tolerance position at Co-Op, acting in bad faith on an important and sensitive public issue thereby risking the reputation of Co-Op and risking damage to its credibility as an ethical company.

5 In his ET1 against Mr Murrells, the Claimant has ticked the boxes for unfair dismissal, race discrimination, holiday pay, arrears of pay and breach of section 172 of the Company Act 2006. Attached to the claim form is a three-page document setting out the details of the Claimant's complaints. In summary, the Claimant wrote to Mr Murrells on 20 September 2020 to bring to his attention the treatment that the Claimant says he has been experiencing at the hands of managers of Co-Op. The Claimant describes this as daily racial harassment, victimisation and discrimination which he contrasts with Mr Murrells' publicly stated commitment to racial equality and inclusion.

6 The Claimant's case is that upon receipt of the letter, Mr Murrells instructed Andy Mills-White to investigate further and there then followed a series of meetings and discussions. Whilst he initially thought that Mr Mills-White was acting in good faith, by 28 April 2021 the Claimant was not ultimately satisfied that this was the case. The particulars of the claim against Mr Murrells are difficult to identify from the narrative. They appear to be claims of repeated breach of contract, aiding acts of bullying, harassment, direct discrimination, victimisation and contravention of the Equality Act cumulating in unfair dismissal and failed to ensure that policies, procedures and practices designed for compliance with the Equality Act were applied properly.

## Law

7 An Employment Judge has power to strike out a claim on the ground it has no reasonable prospect of success under Employment Tribunal Rules of Procedure 2013 rule 37. The power to strike out a claim on the ground that it has no reasonable prospect of success may be exercised only in rare circumstances.

8 The test for strike out imposes a very high threshold: there must be **no** reasonable prospect of success. This requires the Tribunal to consider whether on a careful consideration of all available material it can properly conclude that the claim has no reasonable prospects of success. It is not a matter of whether the Claimant's claim is likely to fail nor of asking whether it is possible that the claim will fail. It is not a test which can be satisfied by considering what is put forward by the Respondent either in the ET3 or in submissions and deciding whether their written or oral assertions regarding disputed matters are likely to be established as facts. A hearing to consider strike out should not be a mini-trial. The Claimant's case should be taken at its highest unless conclusively disproved by (or totally and inexplicably inconsistent with) undisputed contemporaneous documents. Strike out imposes a high test given its draconian nature.

9 As made clear in **Ukegheson v Haringey Borough Council** [2015] ICR 1285, Tribunals should be cautious in exercising the power to strike out, particularly in discrimination claims where there is a public interest in them being heard and because they are likely to be fact sensitive.

10 As was made clear in Cox v Adecco [2021] ICR 1307 EAT, before considering strike out, the Tribunal should make reasonable efforts to identify the claims and the issues to be decided having regard to the pleadings and any core documents that set out the Claimant's case. However, litigants in person should focus on their core case rather than trying to argue every conceivable point. The more prolix and convoluted the claim, the less likely a litigant can criticise the Tribunal for failing to get to grips with it. The Tribunal can only be expected to take reasonable steps to identify claims and issues.

11 Despite the caution to be exercised, it may in exceptional circumstances be permissible to strike out a discrimination or whistle-blowing claim. In Hoppe v HMRC and others EAT/2020/00093 the Employment Appeal Tribunal held that where the allegations or issues are so broad that they cannot be identified with clarity, where there is a severe lack of particulars, the Tribunal is entitled to conclude that a detriment has no reasonable prospect of success. A general theme that concerns raised were not vindicated or actioned, does not sufficiently particularise the detriment and such complaints can properly be struck out.

## Conclusions

12 Claims of unfair dismissal, unauthorised deductions from wages and for holiday pay must be brought against the employer. There is no provision in the Employment Rights Act nor indeed the Working Time Regulations which can confer liability upon an individual employee, manager or officer of the company. The Tribunal does not have jurisdiction to deal with causes of action under the Company Act 2006. It is a creature of statute and can only hear those claims which are specifically allocated to its jurisdiction. As a matter of law, these claims cannot succeed against Mr Murrells individually. I am satisfied that it is appropriate to strike them out as there are no reasonable prospects of success due to the lack of jurisdiction.

13 The situation is not as straightforward in respect of the race discrimination and victimisation claims as section 109 to 112 of the Equality Act 2010 give the Tribunal jurisdiction to hear claims of discrimination brought against individual employees personally and against those who aid, instruct, cause or induce a contravention of the Act. It is therefore necessary for me fully to understand the Claimant's case before I can properly assess whether it has no reasonable prospects of success. I therefore gave the Claimant an opportunity today to explain in greater detail the conduct of Mr Murrells which is said to be a breach of the Equality Act 2010 and did not limit him to the eight points set out in his email.

14 In essence, the Claimant alleges that Mr Murrells authorised the acts of discrimination against him by Mr Mills-White. At one point in his submissions, the Claimant developed his case to an allegation that Mr Murrells had either instructed Mr Mills-White to discriminate or knowingly permitted it to happen. The facts relied upon by the Claimant in support of this case are that he had sent the initial complaint letter to Mr Murrells, Mr Mills-White had intercepted it and, as Mr Mills-White was working on behalf of Mr Murrells, the latter "must have" given an instruction to Mr Mills-White to discriminate. The Claimant also relies on the fact that Mr Mills-White had told him that he was answerable to the Board and would report back to Mr Murrells.

15 Despite the opportunity given to clarify the particulars of the claim against Mr Murrells, I have concluded that it remains so hopelessly vague and lacking in any

particulars that it cannot properly be considered by a Tribunal. As was the case in Hoppe, this is a general theme that the concerns raised by the Claimant were not upheld in the way that he wanted. The Claimant's case then rests upon the assumption that because Mr Mills-White did not uphold the complaints, he must have been acting in breach of the Equality Act 2010 and, because Mr Murrells is the CEO, he must have given an instruction to discriminate or authorised such discrimination.

16 I accept Ms Anderson's submission that the Claimant has sought to include Mr Murrells as a party simply because he is a director and the CEO and, therefore, as the source of ultimate authority within the company must be responsible by default. In Miles v Gilbank [2006] EWCA Civ 543, Lady Justice Arden considered similar provisions in the predecessor legislation. At paragraph 33, Arden LJ made it clear that in order to aid an act of unlawful discrimination, a person must have done more than merely create an environment in which discrimination can occur. Care has to be taken to identify the acts of unlawful discrimination and to examine whether the acts of the person who is alleged to have aided the commission of those acts of discrimination has in fact done so. Even taking the Claimant's case at its highest today, there are no facts or matters which would give any reasonable prospect of successfully persuading a Tribunal that Mr Murrells had aided or instructed any acts in contravention of the Equality Act 2010.

17 For all of these reasons, all claims against Mr Murrells are struck out as having no reasonable prospects of success. All other claims against the Co-Op will proceed.

Employment Judge Russell

5 May 2022